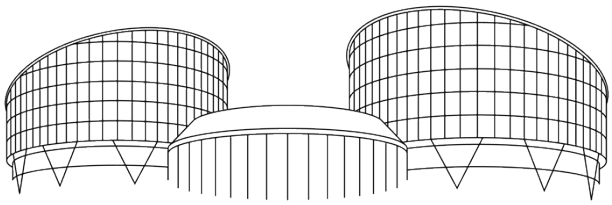

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SEMENYUK v. UKRAINE

(Application no. 9476/06)

JUDGMENT

STRASBOURG

20 January 2011

This judgment is final but it may be subject to editorial revision

In the case of Semenyuk v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Rait Maruste, *President,*
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 14 December 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9476/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Alla Vitaliyivna Semenyuk ("the applicant"), on 14 February 2006.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 24 November 2009 the President of the Fifth Section decided to give notice of the application to the Government. In accordance with Protocol no. 14, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and lives in Rivne.

5. On 10 July 1998 M.B., a private person, lodged a claim with the Rivne Court requesting a contract by which a flat had been sold to him by the applicant and her husband to be declared valid.

6. In November 1998 the applicant lodged a counter-claim seeking the eviction of M.B. and M.A. from the flat.

7. On 3 December 1998 the Rivne Court allowed the M.B.'s claims. It found the applicant's counter-claim unsubstantiated and dismissed them.

8. On 15 March 1999 the Rivne Regional Court quashed the judgment of 3 December 1998 and remitted the case for fresh consideration finding that the first-instance court had failed to examine all the aspects of the case.

9. On 22 December 2004 the Rivne Court, hearing the case in the presence of the applicant and her lawyer, allowed the claims of M.B. and rejected the applicant's counter-claim. It found that the applicant and her son had moved from the disputed flat in May 1998 to live with her parents and she had voluntarily transferred the flat to M.B., though subsequently she refused to have the contract certified by a notary due to a disagreement with her husband.

10. On 17 January 2005 the applicant and her lawyer appealed against the judgment of 22 December 2004.

11. On 27 April 2005 the Rivne Regional Court of Appeal heard the case in the presence of the applicant. The applicant requested the court to postpone the examination of her case as her lawyer could not participate in that hearing. The court rejected her request, dismissed the applicant's appeal and upheld the judgment of 22 December 2004.

12. On 15 August 2005 the Supreme Court rejected the applicant's appeal in cassation.

13. In the course of the proceedings the first-instance court scheduled thirty-one hearings, out of which two were not held because of the applicant's failure to attend, one was adjourned for nine days to allow the applicant to study the case-file and one was adjourned for twenty-three days on the applicant's request. Nineteen hearings were not held because of the other parties' failure to appear or on their request for adjournment of the hearings. Between May 2000 and December 2002 there were five hearings scheduled, of which one was held. In 2003 there were six hearings scheduled and one held.

THE LAW

I. THE COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

14. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The applicant complained that the length of the proceedings had been excessive.

17. The Government submitted that the proceedings concerned a complex issue and had been eventually complicated by the applicant's counter-claim. They further maintained that the applicant had contributed to the length of the proceedings by lodging appeals and requests for adjournment and by failing to appear before the first-instant court.

18. The Court notes that the period to be taken into consideration began on 10 July 1998 and ended on 15 August 2005. It thus lasted seven years and one month for three levels of jurisdiction.

19. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

20. Turning to the facts of the present case, the Court notes that after the remittal of the case for fresh examination it took the first-instance court five years and nine months to deliver a judgment in the case (see paragraphs 8 and 9 above). However, there is nothing to suggest that the applicant was responsible for such a delay or that it was due to the alleged complexity of the case. In that latter respect, the Court notes that the case concerned the validity of a straightforward private contract and did not involve any complex factual or legal issues. Furthermore, the Court reiterates that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see *Moroz and Others v. Ukraine*, no. 36545/02, § 60, 21 December 2006). The Court finds that the State authorities bear the primary responsibility for the excessive length of the proceedings in the present case.

21. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above, *Pavlyulynets v. Ukraine*, no. 70767/01, § 49-53, 6 September 2005; *Vashchenko v. Ukraine*, no. 26864/03, § 50, 26 June 2008, *Pysatyuk v.Ukraine*, no. 21979/04, §§ 24, 30-34, 16 April 2009; and *Popilin v. Ukraine*, no. 12470/04, §§ 24-31, 16 April 2009).

22. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant

case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER COMPLAINTS

23. The applicant complained of a violation of Article 6 § 1 and Article 8 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the outcome of the proceedings in respect of her and her minor son. She also alleged unfairness of the proceedings and a violation of Article 6 § 3 (c) in that the court of appeal had held its hearing in the absence of her lawyer.

24. In the light of the materials in its possession, the Court finds that the applicant's complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

25. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

27. The applicant claimed 300,000[1] Ukrainian hryvnias in respect of pecuniary and non-pecuniary damage. She also requested to be provided with a dwelling.

28. The Government contested these claims.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged as well as the applicant's request to be provided with a dwelling; it therefore rejects these claims. On the other hand, ruling on an equitable basis, it awards the applicant EUR 1,200 in respect of non-pecuniary damage.

1. Approximately 30,500 euros (EUR).

B. Default interest

30. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention of excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Rait Maruste
Deputy Registrar	President